

**Board of Forestry and Fire Protection  
Title 14 of the California Code of Regulations**

**NOTICE OF PROPOSED RULEMAKING**

[Notice Published July 26, 2013]

**“Lumber Products Assessment, 2013”**

**Title 14 of the California Code of Regulations (14 CCR):**

**Division 1.5, Chapter 14 – Lumber Products Assessment**

**ADOPT:**

**§ 1667.1. Authority.**

**§ 1667.2. Timber Regulation and Forest Restoration Fund.**

**§ 1667.3. Definitions.**

**§ 1667.4. Assessed Lumber Products.**

**§ 1667.5. Requests for Review.**

**§ 1667.6. Annual Update of Regulation.**

The California State Board of Forestry and Fire Protection (Board) is promulgating a regulation to make permanent previously adopted emergency regulations. These regulations assist in the implementation of a new retail sale assessment for lumber products sold in California. Specifically, the Board’s regulations provide for the identification of lumber products subject to the 1% assessment at the time of retail purchase. The emergency regulations were adopted and subsequently readopted once pursuant to Assembly Bill 1492. The Bill was signed into law in the Statutes of 2012 as Public Resources Code Section 4629, *et seq.* The emergency regulations have been in effect continuously since September 12, 2012

**PUBLIC HEARING**

The Board will hold a public hearing on Wednesday, September 11, 2013, starting at 8:00 a.m., at the Resources Building Auditorium, 1<sup>st</sup> Floor, 1416 Ninth Street, Sacramento, California. At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action described in the *Informative Digest*. The Board requests, but does not require, that persons who make oral comments at the hearing also submit a summary of their statements. Additionally, pursuant to Government Code § 11125.1, any information presented to the Board during the open hearing in connection with a matter subject to discussion or consideration becomes part of the public record. Such information shall be retained by the Board and shall be made available upon request.

**WRITTEN COMMENT PERIOD**

Any person, or authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. The written comment period ends at 5:00 P.M., on Monday, September 9, 2013.

The Board will consider only written comments received at the Board office by that time and those written comments received in connection with oral testimony at the public hearing. The Board requests, but does not require, that persons who submit written comments to the Board reference the title of the rulemaking proposal in their comments to facilitate review.

Written comments shall be submitted to the following address:

Board of Forestry and Fire Protection  
Attn: Eric Huff  
Regulations Coordinator  
P.O. Box 944246  
Sacramento, CA 94244-2460

Written comments can also be hand delivered to the contact person listed in this notice at the following address:

Board of Forestry and Fire Protection  
Room 1506-14  
1416 9<sup>th</sup> Street  
Sacramento, CA

Written comments may also be sent to the Board via facsimile at the following phone number:

(916) 653-0989

Written comments may also be delivered via e-mail at the following address:

[board.public.comments@fire.ca.gov](mailto:board.public.comments@fire.ca.gov)

**AUTHORITY AND REFERENCE**

Authority cited: Public Resources Code Sections 4629 and 4629.4. Reference: Public Resources Code Sections 4511, 4629.2, 4629.3, 4629.5, 4629.6; and Government Code Section 11340.6.

**INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

Pursuant to the Z'berg-Nejedly Forest Practice Act of 1973, Public Resources Code Section 4511, *et seq.* the State Board of Forestry and Fire Protection (Board) is authorized to construct a system of forest practice regulations applicable to timber management on state and private timberlands.

Public Resources Code Section 4551 requires, among other things, that the Board adopt rules to “protect the soil, air, fish and wildlife, and water resources.” The regulations are enforced by the California Department of Forestry and Fire Protection with the assistance of a number of other state agencies. The State’s cost to implement this comprehensive regulatory program is approximately 30 million dollars. Annual financial support for the program comes from the State’s General Fund.

California’s Executive and Legislative branches of government have at times expressed concerns about the General Fund expenditures necessary to support the Forest Practice Program. Alternative funding mechanisms such as permitting fees and a “penny per board foot” retail sales assessment on lumber products are among the ideas debated over at least the past ten years. It is in this vein that Assembly Bill Number 1492 (hereafter “AB 1492”) was developed by a budget subcommittee during the 2012 Legislative Session. Among several key provisions in the bill is the creation of a new retail sale assessment of 1% of the sales price for lumber products sold in California. The revenue generated from the assessment is to be placed in the newly authorized “Timber Regulation and Forest Restoration Fund” created in the State Treasury. Monies deposited into the fund are to be expended in support of the regulatory activities of the Department of Forestry and Fire Protection, and other state and local agencies involved in the management of forest lands. The Fund would also be utilized to cover the costs of managing forest resource programs in the state, and for grants to state and local public agencies, qualified nonprofit organizations, and recognized Indian tribes. These grants are to be used for forest restoration and fire prevention activities.

AB 1492 was signed into law by Governor Edmund G. Brown, Jr. on September 11, 2012 and required the Board to adopt regulations to assist in the implementation of the lumber product assessment program. The Board’s regulatory role pursuant to AB 1492 is to identify, within the parameters of the statute, the lumber products subject to the retail assessment. The Board adopted emergency regulations to implement provisions of the statute on September 12, 2012 and they were approved by the Office of Administrative Law later that month. Pursuant to the statute, the Board was allowed one re-adoption of the emergency regulations. The Board readopted the emergency regulations at their February 2013 meeting and they became effective March 25, 2013. The Board has until September 23, 2013 to proceed through the regular rulemaking process and adopt a perennial, non-emergency set of regulations.

This regulation would make the short-term emergency regulations in effect since September 2012 the standard for implementation on a long-term basis. The Board, on an annual basis at their April meeting pursuant to the enacting statute, would continue to evaluate and update the regulation as necessary. However, what is proposed herein would serve as the perennial regulatory foundation and would not likely change substantially from year to year.

What could change periodically is the number and type of lumber products subject to the assessment.

*Specific Benefits Anticipated by the Proposed Adoption, Amendment, or Repeal of the Regulation*

Refer to the analysis below under the heading “DISCLOSURES REGARDING THE PROPOSED ACTION AND RESULTS OF THE ECONOMIC IMPACT ANALYSIS”.

*Is The Proposed Regulation Inconsistent Or Incompatible With Existing State Regulations*

The Board considered any other possible related regulations in this area, and has found that these are the only regulations dealing in the subject area of determining products subject to the lumber assessment, and therefore, the Board finds that these proposed regulations are compatible and consistent with existing state regulations.

**DISCLOSURES REGARDING THE PROPOSED ACTION AND RESULTS OF THE ECONOMIC IMPACT ANALYSIS**

The results of the economic impact assessment prepared pursuant to GC § 11346.5(a)(10) for this proposed regulation indicate that it will not result in an adverse economic impact upon the regulated public or regulatory agencies. Adoption of these regulations will not: (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California.

The rulemaking proposal would certainly provide benefits to the environment and the state’s economy through sustainable funding of the State’s Forest Practice Program. The State’s Forest Practice Program is a regulatory foundation certified by the Natural Resources Agency as consistent with the California Environmental Quality Act (CEQA). The Program promotes and encourages sustainable forest practices consistent with provisions of the Z’Berg Nejedly Forest Practice Act in a manner consistent with other laws, including but not limited to, the Timberland Productivity Act of 1982, CEQA, the Porter Cologne Water Quality Act and both the state and federal Endangered Species Acts. The forest practice regulations and accompanying state agency oversight provide a regulatory certainty from which the commercial timber industry has produced well-managed, fire-resilient forest conditions across the state. These conditions are protective of water quality, floral and faunal species, and natural aesthetics, among other elements.

The proposed regulation would help support in-state production of timber within the State's high environmental standards, and promote and encourage retention of forests and forested landscapes. The commercial timber industry regulated by the State Forest Practice Program provides economic benefits to California in the form of tax revenue to support local and state services, employment, and lumber products necessary for construction and secondary manufacturing. Continued funding of the State Forest Practice Program will ensure that these beneficial environmental and economic conditions continue to be produced.

The Board has made an initial determination that there will be no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

**Cost impacts on representative private persons or businesses:**

This regulation identifies within the parameters of the enacting statute, the number and types of lumber products subject to the "lumber products assessment." The assessment amount varies by retail purchase, as it is 1% of the sales price for lumber products sold in California. Roughly translated, this means a consumer would pay one dollar of assessment to the State for every one-hundred dollars of lumber product purchased at a retail outlet.

**Effect on small business:**

No effect to small business is anticipated, as this regulation merely identifies the number and types of lumber products subject to the assessment.

**Mandate on local agencies and school districts:**

The proposed regulation does not impose a mandate on local agencies and school districts.

**Costs or savings to any State agency:**

The proposed regulation is anticipated to generate approximately 7.5 million dollars in State General Fund savings in the current fiscal year. On an annual basis this number is expected to be approximately 30 million dollars in General Fund savings.

Implementation and annual regulation review costs to the Board are anticipated to range between five and twenty-thousand dollars, but could be much lower.

**Cost to any local agency or school district which must be reimbursed in accordance with the applicable Government Code (GC) sections commencing with GC § 17500:**

The proposed regulation does not impose a reimbursable cost to any local agency or school district.

**Other non-discretionary cost or savings imposed upon local agencies:** The proposed regulation will not result in the imposition of non-discretionary costs or savings to local agencies.

**Cost or savings in federal funding to the State:**

The proposed regulation will not result in costs or savings in federal funding to the State.

**Significant effect on housing costs:**

The proposed regulation will not significantly affect housing costs.

**Conflicts with or duplication of Federal regulations:**

The proposed regulations neither conflict with, nor duplicate Federal regulations. There are no comparable Federal regulations for timber harvesting on State or private lands.

**BUSINESS REPORTING REQUIREMENT**

The regulation does not impose a business reporting requirement.

**CONSIDERATION OF ALTERNATIVES**

In accordance with Government Code § 11346.5(a)(13), the Board must determine that no reasonable alternative it considers or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

**CONTACT PERSON**

Requests for copies of the proposed text of the regulations, the *Initial Statement of Reasons*, modified text of the regulations and any questions regarding the substance of the proposed action may be directed to:

Board of Forestry and Fire Protection  
Attn: Eric Huff  
Regulations Coordinator  
P.O. Box 944246  
Sacramento, CA 94244-2460  
Telephone: (916) 653-9633

The designated backup person in the event Mr. Huff is not available is Mr. George Gentry, Executive Officer of the California Board of Forestry and Fire Protection. Mr. Gentry may be contacted at the above address or by phone at (916) 653-8007.

## **AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS**

The Board has prepared an *Initial Statement of Reasons* providing an explanation of the purpose, background, and justification for the proposed regulations. The statement is available from the contact person on request. When the *Final Statement of Reasons* has been prepared, the statement will be available from the contact person on request.

A copy of the express terms of the proposed action using UNDERLINE to indicate an addition to the California Code of Regulations and ~~STRIKETHROUGH~~ to indicate a deletion is also available from the contact person named in this notice.

The Board will have the entire rulemaking file, including all information considered as a basis for this proposed regulation, available for public inspection and copying throughout the rulemaking process at its office at the above address.

All of the above referenced information is also available on the Board web site at:

[http://www.fire.ca.gov/BOF/board/board\\_proposed\\_rule\\_packages.html](http://www.fire.ca.gov/BOF/board/board_proposed_rule_packages.html)

## **AVAILABILITY OF CHANGED OR MODIFIED TEXT**

After holding the hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text—with the changes clearly indicated—available to the public for at least 15 days before the Board adopts the regulations as revised. Notice of the comment period on changed regulations, and the full text as modified, will be sent to any person who:

- a) testified at the hearings,
- b) submitted comments during the public comment period, including written and oral comments received at the public hearing, or
- c) requested notification of the availability of such changes from the Board of Forestry and Fire Protection.

Requests for copies of the modified text of the regulations may be directed to the contact person listed in this notice.

The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

A handwritten signature in black ink, appearing to read "Eric Huff", written over a horizontal line.

Eric Huff  
Regulations Coordinator  
Board of Forestry and Fire Protection